REMARKS

Reconsideration and continued examination of this application is respectfully requested. Claims 1-3, and 5-17 are pending in this application.

1. Status of the Claims

Claims 1-3 and 5-17 are pending in this application. Claims 1 and 12 have been amended to recite a binder consisting of less than about 6% by weight water and at least about 94% by weight sugar. Claim 9 has been amended to correct an informality (addition of the term "wherein"). Claim 17 has been amended to recite that the process includes a liquid binder sugar solution consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar.

2. 35 U.S.C. 112, First Paragraph Rejections

Claims 1-3 and 5-17 are rejected under 35 U.S.C. 112 as failing to comply with the written description requirement. The Examiner contends, as elucidated in the Advisory Action mailed June 24, 2005, that there is no support in the original disclosure for the terms "consisting essentially of" in claim1, line 3 and claim 12, line 6, or "a fat-free liquid binder" in claims 9 and 17. Amended claims 1 and 12 recite "mixing (combining in claim 12) ingredients comprising dry mix ingredients." Thus the rejection as to claim 1 and 12 is now moot. Support for a fat-free binder is found in the original specification at page 12, Example 2 where the binder contains only water, saccharose and maltose syrup. Consequently, the binder is clearly fat-free. In view of the foregoing, Applicants respectfully request the rejections under 35 U.S.C. 112, first paragraph be withdrawn.

3. Prior Art Rejections

Claims 1-3, 5, and 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,451,488 to Cook et al. (Cook). Claims 6, 7, and 17 are rejected under 35 U.S.C. 103(a) as being obvious over Cook in view of U.S. Patent No. 4,784,867 to LaBaw et al. (LaBaw).

4. **Cook does not teach or suggest mixing dry mix ingredients with a binder consisting of less than about 6% by weight water and at least about 94% by weight sugar or mixing dry mix ingredients with a fat-free binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar.**

Claims 1 and 12 have been amended, respectively, to clarify that the method of the present invention includes mixing dry mix ingredients with a binder consisting of less than about 6% by weight water and at least about 94% by weight sugar. Claims 9 and 17 require mixing dry mix ingredients with a fat-free binder consisting essentially of less than 6% water and at least 94% by weight sugar. As such, these claims properly exclude the mixing or addition of fat or any other material component to the binder solution.

Applicants maintain that the processes of claims 1, 9, 12, and 17 are patentable over Cook and LaBaw because neither reference, alone or in combination, teaches the particular process limitations set forth in the claims, particularly the limitation of mixing dry mix ingredients with a binder consisting of less than about 6% by weight water and at least about 94% by weight sugar or mixing fry mix ingredients with a fat-free binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar. Applicants note that the claimed invention is directed to a process, and not a product, and thus the process limitations must be evaluated for patentability. Moreover, even *assuming arguendo* for the purpose of this argument only that the finished product of the claimed invention and Cook or LaBaw are the same (which they are not), the Examiner is incorrect to contend that Cook or LaBaw must necessarily form their respective products using the same claimed processes. Accordingly, since neither Cook nor LaBaw , alone or in combination, teach or suggest all the claim limitations of the present invention and since the finished products of Cook and LaBaw are made by a different process than the claimed invention, claims 1, 9, 12, and 17 are patentable over Cook and LaBaw.

First, Applicants maintain that neither Cook nor LaBaw, alone or in combination, teach or suggest mixing dry mix ingredients with a binder consisting of less than about 6% by weight water and at least about 94% by weight sugar (claims

1 and 12) or mixing dry mix ingredients with a fat-free binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar (claims 9 and 17). Instead, Cook teaches mixing (a) natural growth cereals (oats, wheat, rice); (b) a combination of polyhydric alcohols, such as sorbitol and glycerol, and (c) a binder system which includes sugars, corn syrup, shortening (fat – and in substantial quantity), salt, flavoring, antioxidants, and a combination of sorbitol and glycerol. *See* Cook, col. 2, lines 36-43 and col. 4, lines 6-15. Thus, by requiring the mixing of a combination of polyhydric alcohols and fat and the addition of fat to the binder, Cook does not teach or suggest mixing dry mix ingredients with a binder consisting of less than about 6% by weight water and at least about 94% by weight sugar or a fat-free binder or mixing dry mix ingredients with a fat-free binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar.

Applicants further submit that there is no difficulty in discerning the composition of the binder of Cook, whether in the midst of the process of forming the final product or determining what constitutes the binder in the final product. Cook is expressly clear as to what constitutes its binder. Even it were not expressly clear, one skilled in the art would readily be able to ascertain which components have binding characteristics and are useful in a binder. Reliance on such ordinary skill in the art, however, is not necessary because Cook clearly teaches a binder solution wherein "the sugar content is relatively low..." and which includes "sugars, e.g. sucrose, invert sugars, corn syrup, and shortening; salt, flavoring, antioxidants, and a combination of sorbitol and glycerol." *See* Cook, col. 2, lines 36-43 and col. 3, line 40 – col. 4, line 52 (Table I and Examples I-II). In fact, in the Cook disclosure and examples, including what is described as a typical composition of the binder of Cook, shortening (fat) is present in an amount of from about 27-33% by weight of the combined fat and sugar present. Thus, Cook does not meet the claimed process limitations as Cook does not teach or suggest mixing dry mix ingredients with a binder consisting of less than about 6% by weight water and at least about 94% by weight sugar or mixing dry mix ingredients with a fat-free binder consisting

essentially of less than about 6% by weight water and at least about 94% by weight sugar.

Even further, this binder system of Cook teaches away from the present invention. Teaching away is a *per se* demonstration of a lack of prima facie obviousness. *In re Dow Chemical,* 837 F.2d 469 (Fed. Cir. 1988). In rejecting the present claims, the Examiner must consider a reference in its entirety, as a whole, including the portions that would lead away from the claimed invention. *See* MPEP 2141.02. A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be led in a direction divergent from the path that was taken by the applicant. *Tec Air, Inc., v. Denso Mfg. Mich. Inc.,* 192 F.3d 1353, 1360 (Fed. Cir. 1999). One skilled in the art would be led on a path divergent from a binder composition consisting of less than about 6% by weight water and at least about 94% by weight sugar or a fat-free binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar by a reference teaching a fat-containing binder having "a relatively low sugar content" and which includes "sugars, e.g. sucrose, invert sugars, corn syrup, and shortening, salt, flavoring, antioxidants, and a combination of sorbitol and glycerol" as in Cook.

Applicants further submit that LaBaw does not teach or suggest mixing dry mix ingredients with a binder consisting of less than about 6% by weight water and at least about 94% by weight sugar or mixing dry mix ingredients with a fat-free binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar. Instead, LaBaw teaches a binder composition which comprises about 5-10% by weight of water, about 15-30% by weight of fat, and a mixture of sucrose and partially caramelized non-crystallizing sugar in a weight ratio of about 1:0.8-3. See LaBaw (abstract) and col. 4, lines 17-34. Thus, LaBaw also does not teach or suggest the claimed process limitations.

Moreover, even *assuming arguendo* that the finished product of the claimed invention and Cook are the same or similar finished product, it can hardly be said that the processes to make the finished product are necessarily the same. In the present matter, it is the process of making the finished product, and not the finished product, that is the subject of the application's claims. The particular type of binder,

however, is critical to the process of making the snack product of the present invention. Since neither Cook nor LaBaw, alone or in combination, teach or suggest mixing dry mix ingredients with the claimed binder compositions, neither reference can teach all the process claim limitations or provide the advantages the claimed binder provides for the claimed processes. For example, by mixing dry mix ingredients for the granola or snack-food products at elevated temperature with a binder consisting of less than about 6% by weight water and at least about 94% by weight sugar (claims 1 and 12) or by mixing dry mix ingredients with a fat-free binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar (claims 9 and 17), the claimed invention provides a process which efficiently and rapidly binds and sets dry mix ingredients to a relatively non-sticky and dry state suitable for a desired end product without the need for further drying or processing steps as in the prior art. *See* Specification, p. 2, lines 22-28. This is a substantial advantage of the claimed processes over the prior art as the claimed invention enables the formed product to proceed to cooling and packaging stations, even if still warm, instead of being sent to further processing stations, i.e. a drying station (p. 8, line 31 to p. 9, line 5). Furthermore, the claimed processes provide a binder which is easily and inexpensively prepared (p. 3, lines 26-27), and which enables the processes to be reversible by allowing the reheating and reforming of the cooled, formed product into a new or different product without waste or detriment. *See* p. 11, lines 23-27.

As such, the final product of Cook, LaBaw, and the claimed invention are not necessarily formed by the identical process, particularly in view of the fact that neither Cook nor LaBaw, alone or in combination, teach or suggest mixing dry mix ingredients for the granola or snack-food products at elevated temperature with a binder consisting of less than about 6% by weight water and at least about 94% by weight sugar (claims 1 and 12) or mixing dry mix ingredients with a fat-free binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar (claims 9 and 17) to provide the above discernible advantages. In view of the above, claims 1, 9, 12, and 17, and all claims dependent thereon, are patentable over Cook and LaBaw.

CONCLUSION

In view of the above, claims 1-3 and 5-17 are in condition for allowance and an early indication of allowance is solicited.

Respectfully submitted,

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